

HOUSE BILL 1355  
By Curtiss

AN ACT to amend Tennessee Code Annotated, Title 13, Chapter 3; Title 13, Chapter 4; Title 13, Chapter 7 and Title 68, relative to land use planning.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 7, Part 1, is amended by adding the following as a new, appropriately designated section:

Section 13-7-118. Requirements for Certain Special Uses in Counties Without Zoning Restrictions.

(a) Since certain uses of land impose special burdens and impacts on persons, properties, and roads surrounding them, and have significant and sometimes adverse environmental impacts, the following special uses, when taking place in counties with no county-wide zoning regulations pursuant to this chapter, shall require the approval of the county legislative body in which the land is located:

- (1) Arsenals;
- (2) Atomic reactors;
- (3) Explosives manufacturing and storage;
- (4) Hazardous wastes;
- (5) Radioactive wastes;

- (6) Waste incinerators, including hospital and medical waste;
- (7) Mining and quarrying;
- (8) Slaughterhouses and rendering plants; and
- (9) Asphalt plants.

(b) Applicability. The provisions of this section shall apply only to the areas of any county that are not within a municipal boundary and only in counties that have not adopted a zoning ordinance regulating the area in which the proposed special use is to be located. It shall not be necessary for a county legislative body to enact zoning regulations or to participate in a regional planning commission to exercise the powers granted hereunder.

(c) Administrative Procedure.

(1) Preliminary review. Any person wishing to utilize land for a special use shall apply to the county legislative body in accordance with the provisions of this section prior to undertaking any such use. All applications for a special use shall be accompanied by a fee, as set by the county legislative body, to defray costs resulting from the application, and by:

(A) Documents disclosing the identity of all owners, lessors, optionees, contract purchasers or lessors, or other persons having any present or anticipated future financial interest in the site or anticipated future financial interest in the site or any entity owning or leasing the site;

(B) Copies of all required state or federal permits;

(C) If property is to be acquired or leased, copies of all options, purchase contracts, leases or similar documents;

(D) A development plan, which shall include the following information:

(i) Letter from the owner detailing and authorizing the proposed special use;

(ii) Stages of development of the site and the expected time of completion;

(iii) Location map of the proposed site, including size and shape of the property;

(iv) A site plan and topographic map, which shall include the location of all buildings and structures and their approximate dimensions, the location of interior roads and parking areas, the utilization of all structures and land areas within the site, a detailed landscaping plan of the buffer zone prepared by a landscape architect, and the location and type of all fences, utilities, and all other features and facilities to be installed or used in connection with the proposed operation. The site plan and topographic map shall be prepared by a Tennessee licensed engineer or a Tennessee licensed land surveyor, shall be scaled at one inch (1") equals two hundred feet (200'), and shall have contours at vertical intervals of not more than two feet (2') where the proposed development has an average slope of five percent (5%) or less, at vertical intervals of not more than five feet (5') where the average slope exceeds five percent (5%). The contours shall be field surveyed or taken from aerial photographs acceptable to the county legislative body;

(v) Land use evaluation, including all building locations and historic sites within a two (2) mile radius of the proposed site, and names of property owners;

(vi) Haul route and highway assessment showing all roads with access to the property, school bus routes, the existing width,

condition, type of surface, weight loads and existing traffic data, and classification of all access roads;

(vii) In the case of mining, a reclamation plan and reclamation bond in the amount of ten thousand dollars (\$10,000) per acre for each acre to be utilized in the special use;

(viii) Proof of liability insurance, if blasting is to be conducted, in an amount no less than ten million dollars (\$10,000,000);

(ix) A tabulation of the land areas to be devoted to all uses and activities by a Tennessee licensed land surveyor; and

(x) Ability of the site to be able to meet the site location criteria in subsection (c)(2) below;

(E) Operational data which shall include the following information:

(i) Type of operation and detailed description of the operation;

(ii) Average number of vehicles entering and leaving the site on a daily basis and the routes taken;

(iii) Types of federal and state permits required for the operation of the proposed facility;

(iv) Safety measures to be used on site as well as the system for dealing with complaints;

(v) Ultimate use and ownership of the site after completion of operation (landfills only); and

(vi) Reclamation of the site;

(F) Environmental assessments which shall include the following information:

(i) Geological data on the site prepared by a Tennessee licensed geologist;

(ii) Surface and ground water assessment of the effects of the proposed use on ground water quality in the area;

(iii) Effects of the proposed use on air quality in the area;  
and

(iv) Potential danger to any surface water or water supply;

(G) Site and geological data which shall include the following:

(i) Soil and geology, with soil borings to a point of refusal, with a minimum of two (2) borings per acre;

(ii) Final grading and drainage plan for the entire site, including surface drainage patterns, and all areas for surface water detention or retention;

(iii) Ground water movements and aquifer information;

(iv) Existing vegetation cover on the site; and

(v) Annual climate of the area, including annual

precipitation and wind direction.

(2) Site Location Criteria. The following criteria are examples of considerations that may be used by the county legislative body to evaluate an application for approval to operate a special use:

(A) The proposed site will be located in a sparsely populated area apart from concentrations of residential developments and community facilities where concentrations of people will be present.

(B) The proposed use does not have the potential to pollute or deteriorate air quality, surface or subterranean water, or any other natural features.

(C) The proposed site will not be located in an area where it has the potential to contaminate the source of an existing public water supply.

(D) The proposed site will be free of sinkholes, caves, caverns, or other karst features that would present significant potential for surface collapse or significant degradation to local ground water resources.

(E) The proposed site will be adequately served by public utilities and services to ensure a safe operation.

(F) The proposed use will not result in the transportation of dangerous products or wastes through areas of population concentrations which would endanger community safety.

(G) Access to the site will be from a road classified as an arterial or collector road that is adequate for the use contemplated.

(H) The proposed site will not be located within a one hundred (100) year flood plane or wetland.

(i) The size of the site on which the proposed site is to be located is adequate to mitigate substantially all off-site impacts on surrounding property.

(3) Approval Process. After the application is complete, the county legislative body shall have ninety (90) days within which to approve or disapprove the special use. Before finally approving such special use, the county legislative body shall hold a public hearing thereon, at least thirty (30) days' notice of the time and place of the hearing shall be given by at least one (1) publication in a newspaper of general circulation in the county. Approval of any such special use shall require the affirmative vote of a majority of the entire county legislative body. Any subsequent changes to the development plan shall

require the approval of the entire county legislative body (after appropriate public hearing) in the same manner as the original application was approved.

(d) Accessory Uses and Structures. Accessory structures and uses customarily incidental to the permitted uses shall be permitted provided, that such accessory uses are carried out on the same lot and are not otherwise prohibited.

(e) Non-conforming Use. It is the intent of this section to treat existing non-conforming uses, buildings, and structures so as to avoid an unreasonable invasion of established private property rights and to recognize that certain uses must expand over time in order to continue to exist. Lawful non-conforming uses, buildings, and structures existing at the time of the passage of this act or any amendment thereto and which have all required local, state, or federal permits shall be allowed to continue subject to the following provisions:

(1) When a non-conforming use of any structure or land has been discontinued or ceases for a period of one (1) year, it shall not be re-established or changed to any use not in conformity with the provisions of this section.

(2) Any non-conforming building or non-conforming use which is damaged by fire, flood, wind, or act of God may be reconstructed and used as before if done within one (1) year of such damage, in which case any repair or reconstruction shall be in conformity with the provisions of this section.

(3) On the effective date of this act, any property on which a special use is currently being conducted and for which the owner or operator of such use holds all required state, local, or federal permits shall be approved for the special use upon the request of the owner or lessee of such property and proof that the property presently has all required permits for the operations as they are then being conducted. Only that portion of the property on which the use is actually being conducted pursuant to the above-referenced permits, together with every

contiguous parcel under common ownership or lease shall be approved for the special use. Provided further, however, that the only permitted use on any such property as described in this subdivision shall be the special use being conducted at the time of the effective date of this act, together with any appropriate accessory uses, including accessory uses that may be added in the future. Any landowner may elect to continue an existing special use without making application for the designation of his property as a special use under the terms of this section.

(f) Agricultural Use of Land. This section shall not be construed as regulating the erection, construction, or reconstruction of any building or other structure on lands now devoted to agricultural uses or which may hereafter be used for agricultural purposes, if such building or structure is incidental to the agricultural enterprise. Nor shall this section be construed as limiting or affecting in any way or controlling the agricultural uses of land.

(g) Appeals to the Court. Any person or persons or any board, taxpayer, department or bureau of the county aggrieved by any decision of the county legislative body pursuant to this section may seek review by a court of competent jurisdiction of such decision in a manner provided by state law.

(h) Penalties. A person violating the provisions of this section commits a Class C misdemeanor and shall be fined appropriately for each offense; each day such violation continues shall constitute a separate offense.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.



